

GOVERNMENT PROPOSED JURY INST. NO. 239

Specific Items Method of Proof
(Unreported Income)

To establish the first element of the offense charged, namely, the receipt by the defendant of unreported income upon which a substantial amount of tax was due and owing, the government has presented evidence under the "specific item" method of proof. The "specific item" method simply consists of offering evidence of particular or specific amounts of taxable income received by the defendant during a particular tax period, with evidence that the defendant did not include such amounts in his [her] tax return for such period, together with evidence concerning the defendant's knowledge of the omission and his [her] intent and willfulness in attempting to evade payment of tax by the omission.

United States v. Beck, 59-2 U.S.T.C., para. 9486, p. 73,115 (W.D. Wash. Feb. 19, 1959), *aff'd in part and rev'd in part on other grounds*, 298 F.2d 622 (9th Cir.), *cert. denied*, 370 U.S. 919 (1962)

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Specific Items Method

To prove that substantial additional tax was due, the government must prove beyond a reasonable doubt that (a) the defendant received substantial income in addition to what he reported on his income tax return, and (b) there was tax due in addition to what was shown to be due on the return.

In order to prove that the defendant received substantial additional income omitted from his tax return, the government in this case has introduced evidence of [*describe the specific items of income or other evidence which is the basis for the allegation of evasion*].

If you find, based on all the evidence, that the government has established beyond a reasonable doubt that the defendant received substantial income in addition to what he reported on his income tax return for the year in question, then you must decide whether there was tax due in addition to what was shown to be due on the return, as a result of the defendant's additional, unreported income. In reaching your decision on this issue, you should consider, along with all the other evidence, the expert testimony introduced during the trial concerning the computation of the defendant's additional tax liability, when the alleged additional income was taken into account.

If you find, based on all the evidence, that the government has established beyond a reasonable doubt that the defendant received substantial additional income, and that there was tax due in addition to what was shown to be due on his income tax return, as a result of this additional income, then this first element has been satisfied.

2 L. Sand, *et al.*, **Modern Federal Jury Instructions**, (1993 Ed.), Instruction 59-5